

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

**George R. LeBoeuf,**

*Plaintiff,*

**v.**

**Case No. 3:03-cv-463  
Judge Thomas M. Rose**

**Hewlett-Packard Company,**

*Defendant.*

---

**DECISION AND ENTRY ADOPTING REPORT AND  
RECOMMENDATIONS OF UNITED STATES CHIEF MAGISTRATE  
JUDGE MERZ, (DOC. 19), OVERRULING PLAINTIFFS' OBJECTIONS TO  
CHIEF MAGISTRATE'S REPORT AND RECOMMENDATIONS, (DOC. 20),  
GRANTING DEFENDANT HEWLETT-PACKARD'S MOTION FOR  
SUMMARY JUDGMENT, (DOC. 11), DIRECTING THAT JUDGMENT BE  
ENTERED IN FAVOR OF DEFENDANT AND AGAINST PLAINTIFF AND  
TERMINATING CASE.**

---

Pending before the Court are Plaintiffs' Objections to the Report and Recommendations of Chief Magistrate Judge Merz. Doc. 20. The Report and Recommendation, Doc. 19, concludes that summary judgment should be granted to Defendant. As required by 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72(b), the Court has made a *de novo* review of the record in this case. Upon said review, the Court finds that Plaintiff's objections, Doc. 20, to the Magistrate Judge's Report and Recommendations, Doc. 19, are not well taken and they will be overruled. Accordingly, the Court will grant Defendant Hewlett-Packard's Motion for Summary Judgment. Doc. 11.

The instant case stems from a company-wide reduction in the Hewlett-Packard's workforce that resulted in the termination of the employment of Plaintiff George R. LeBoeuf, who was an officer with the Army Reserves. As a member of the Army reserve, LeBoeuf was protected from discrimination in employment decisions by the Uniformed Services Employment and Reemployment Rights Act, USERRA, 38 U.S.C. § 4301.

Approximately two months after a two-week training assignment with the Army, a Hewlett-Packard decision to reorganize its sales force resulted in LeBoeuf having his responsibilities transferred to a new territory. A year later, Hewlett-Packard terminated his employment in a company-wide reduction in force. LeBoeuf has since decided to serve our country in the Army full-time.

Meanwhile, he has filed a complaint in this Court alleging that Hewlett-Packard violated USERRA by terminating his employment. Hewlett-Packard has filed a motion for Summary Judgment that was referred to Chief Magistrate Michael R. Merz. A report and recommendation issued, concluding that the motion should be granted. Plaintiff has objected to the report and recommendation.

Plaintiff's objections largely misconstrue the nature of direct evidence that is required to survive a motion for summary judgment. Direct evidence, in the form of verbal comments, will be similar to an employer telling its employee, "I fired you because you are [in the Army reserve]." *Smith v. Chrysler Corp.*, 155 F.3d 799, 805 (6th Cir. 1998). Plaintiff has no evidence of any such admission by Hewlett-Packard to anyone. The closest evidence to direct evidence that Plaintiff brings to the Court's attention are two incidents of LeBoeuf being questioned by superiors after the events of 9/11 as to whether he would be called to active service or volunteer

for such. Hewlett-Packard was concerned that it would have sufficient staff for the upcoming year. It was not until September of 2002 that LeBoeuf's position was terminated. While Plaintiff asserts that this may have been part of an elaborate two-step plan to discriminate against LeBueof, LeBoeuf has presented no direct evidence to support this theory. The Court thus adopts the Magistrate's analysis of LeBoeuf's asserted direct evidence of discrimination. The Court has reviewed the Magistrate's analysis of whether LeBoeuf can put forth a *prima facie* case of discrimination, and hereby adopts it as well.

Thus, having completed a *de novo* review, the Court **ADOPTS** the Chief Magistrate Judge's report and recommendation. Doc. 19. Defendant's Motion for Summary Judgment, doc. 11, is **GRANTED**. The Clerk will enter judgment in favor of Defendant the Hewlett-Packard Company and against Plaintiff George R. LeBoeuf. The captioned cause is hereby ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

**DONE** and **ORDERED** in Dayton, Ohio, Monday, April 10, 2006.

s/Thomas M. Rose

---

THOMAS M. ROSE  
UNITED STATES DISTRICT JUDGE